

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: April 18, 2008

Signature: 

(Daniel J. Woods)

Docket No.: TEVNHC 3.3-083  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	:	
Barney et al.	:	
	:	
U.S. Application	:	Group Art Unit: N/A
No.: 10/574,386	:	
	:	
International Application No.	:	Confirmation No.: 2232
PCT/US2004/032160	:	
	:	Examiner: Not Yet Assigned
International Filing Date:	:	
October 2, 2004	:	
	:	
For: DRY POWDER INHALATION	:	Date: April 18, 2008
APPARATUS	:	

MS PCT  
Commissioner for Patents  
Office of PCT Legal Admin.  
P.O. Box 1450  
Alexandria, VA 22313-1450

RENEWED PETITION UNDER 37 CFR 1.47(a)

Dear Sir:

This is in response to Decision on Petition under 37 CFR 1.47(a) dated September 18, 2007, dismissing the Petition without prejudice. It is respectfully requested, in light of the arguments and evidence set forth herein, that this Renewed Petition under 37 CFR 1.47(a) be granted.

The present patent application names Brian Barney, David O'Leary and Rachel Striebig as co-inventors. Statutory Declarations under 37 C.F.R. § 1.63, executed by Brian Barney and Rachel Striebig, are enclosed herewith. In accordance with MPEP § 409.03(a), the Declaration contains a signature block for all three inventors. Co-Inventor O'Leary has not executed a

declaration. Thus, Applicants respectfully submit the following information and documentation in support of this Renewed Petition Under 37 CFR § 1.47(a).

Pursuant to 37 C.F.R. § 1.47(a), the last known address of the non-signing inventor is as follows:

David O'Leary, 25 Newburgh Road, Little Thurrock  
Grays, Essex, RM17 6UG, United Kingdom.

By way of background, Applicant Norton Healthcare Limited, filed a Petition under 37 CFR 1.47(a) on May 2, 2007, to accept the application without the signatures two of the three joint inventors, namely, Rachel Striebig, and David O'Leary. In a Decision on Petition mailed September 18, 2007, the petition was dismissed because 1) no documentation was provided regarding the documents sent to Mr. O'Leary and it was unclear why the "bt.com" site was not searched; 2) no documentation was provided regarding the documents sent to Ms. Striebig; and 3) it was unclear whether Brian Barney signed a complete copy of the declaration document.

With respect to David O'Leary, the attached Exhibit A is an Affidavit of Samantha Claire Radley, Patent Administrator for Norton Healthcare Limited. She documents her own efforts in a diligent attempt to locate Mr. O'Leary. Specifically, it states that she conducted various internet searches to obtain the telephone number or any information relating to Mr. O'Leary. The Exhibits submitted with Ms. Radley's affidavit demonstrate that this was unsuccessful. She also attempted to obtain information from his former colleagues as well as Norton's Human Resources Department; also with no success. Additionally, on two occasions she attempted to have a Complete Declaration, the Application and an Assignment delivered to his last known address. Both times these documents were returned as undeliverable. The exhibits submitted with Ms. Radley's affidavit demonstrate that delivery attempts were made to Mr. O'Leary's last known address and that such packages were

returned as undeliverable. All attempts to locate and obtain the signature of Mr. O'Leary have failed.

With respect to Rachel Striebig, she has been located and a copy of her signed declaration is submitted herewith. Applicants affirm that Ms. Striebig was given a complete copy of the declaration document which included a complete listing of all inventors. Her declaration submitted herewith should be sufficient to demonstrate this fact on its face.

With respect to Brian Barney, Applicants submit herewith his newly signed declaration. Applicants affirm that Mr. Barney was given a complete copy of the declaration document which included a complete listing of all inventors. His declaration submitted herewith should be sufficient to demonstrate this fact on its face.

In view of the statements made herein and the evidentiary support submitted herewith, it is respectfully requested that this Renewed Petition be granted.

Further enclosed herewith is a Petition for extension of time to respond to the Dismissal without Prejudice.

In the event that any other fees are due in connection with this present petition, the Commissioner is hereby authorized to charge Deposit Account No. 12-1095 therefor.

Dated: April 18, 2008

Respectfully submitted,

By 

DANIEL J. WOODS

Registration No.: 59,864  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
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Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicant

# EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent Application of:	:
Barney et al.	:
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	:
Application No.: 10/574,386	: Group Art Unit: N/A
	:
Filed: March 31, 2006	: Examiner: Not Yet Assigned
	:
For: DRY POWDER INHALATION APPARATUS	:
	:

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AFFIDAVIT OF SAMANTHA CLAIRE RADLEY**

I, SAMANTHA CLAIRE RADLEY, of 79 Gellatly Road, London, SE14 5TU, United Kingdom, Patent Administrator, MAKE OATH and say as follows:

1. I am a Patent Administrator for Norton Healthcare Limited ("Norton") and I make this affidavit in support of Norton's United States Patent Application Number 10/574,386 ("the '386 application") entitled "Dry Powder Inhalation Apparatus".
2. On 3 August 2006, I sent a package via DHL courier to the last known address of David O'Leary, 25 Newburgh Road, Little Thurrock Grays, Essex, RM17 6UG, United Kingdom, one of the inventors of the '386 application. This package contained a Declaration for Utility or Design Patent Application, a copy of the '386 application and an Assignment of Utility Application. The DHL package was returned to me marked "Not known at this address. Please return to sender." A copy of the envelope bearing said marking along with a copy of the contents of said package are included herewith as Exhibit 1.
3. On 5 January 2007, I again sent a package via DHL courier to the last known address of David O'Leary. This package contained a Declaration for Utility or Design Patent Application, a copy of the '386 application and an Assignment of Utility Application. The DHL package was returned to me. We no longer have a copy of the DHL package or its tracking data but a copy of the letter which

was sent to David O'Leary is included herewith as Exhibit 2.

4. On 1 March 2007, I conducted an internet search for "David O'Leary" on the website 192.com which contains a database of current United Kingdom electoral roll details and residential telephone numbers for residents in the United Kingdom. In response to my search the website stated "Sorry, no matched results". A printout of the search results is included herewith as Exhibit 3.
5. On 1 March 2007, I conducted an internet search for "D O'Leary in Grays, Essex" on the website bt.com. This website is commonly referred to as "The Phone Book" in the United Kingdom. In response to my search the website stated "The person could not be found." A printout of the search results is included herewith as Exhibit 4. I am aware that the U.S. Patent Office is concerned with the fact that this search was limited to Grays, Essex. The bt.com website requires that a user identify a location for the search. It is impossible to search all of the United Kingdom using this search engine without conducting hundreds if not thousands of individual searches. Accordingly, I conducted the search in the location where David O'Leary was last known to reside.
6. On 6 March 2007, I contacted Jaz Ghick, HR Advisor for Norton's Human Resources Department and asked whether Norton Healthcare had received any request for a personell reference for David O'Leary from a prospective employer. It was my intent to contact any such employer to obtain David O'Leary's current contact information. Jaz Ghick informed me that no one had made such an inquiry. A copy of this e-mail exchange is included herewith as Exhibit 5.
7. On 13 February 2008, I contacted Xian-Ming Zeng, Senior Director of Global Respiratory R&D and former colleague of David O'Leary to find out if he knew how to contact David O'Leary. He was unable to provide me with any helpful contact information.
8. On 18 February 2008, I contacted Michael Goller, Associate Director of Respiratory R&D and former colleague of David O'Leary to find out if he knew how to contact David O'Leary. He was unable to provide me with any helpful contact information.
9. I would normally expect that, if a person was a resident of the United Kingdom, I would be able to find his or her contact information using either the 192.com or bt.com websites because the 192.com website searches both the electoral rolls as well as telephone numbers over all of the United Kingdom and the bt.com website searches

Application No.: 10/574,386

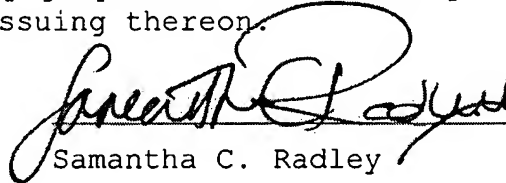
Docket No.: TEVNHC 3.3-083  
PATENT

residential phone numbers within a more targeted geographic area. The fact that both these searches failed to provide any details on David O'Leary's whereabouts lead me to conclude that he cannot be found.

10. It is my belief that I cannot find or contact David O'Leary.

11. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: April 18, 2008



Samantha C. Radley

# EXHIBIT 1





DHL Connect 4681460151

1. Payer account number and insurance details

Charge To ☒ Shipper ☐ Receiver ☐ 3rd party

Payer Account No. 130757940

Shipment Insurance ☐ Yes insured value ☐ No at payment options are available

2. From (Shipper)

Shipper's account no. 130757940

Contact name Albert S. Leary

Shippers reference (up to 32 characters but only first 20 are shown on label) 9101

Company name IVAX Pharmaceuticals

Address Albert Basin Royal Docks London United Kingdom

Postcode/Zip Code (required) E16 2QJ

Phone, Fax or E-Mail (required) 0207 540 7514

3. To (Receiver)

Company name DAVID O' LEARY

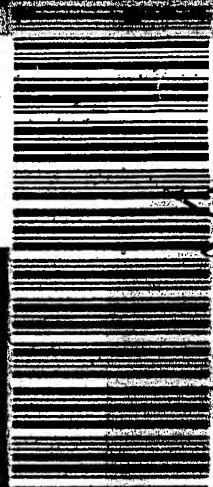
Delivery address 25 NEWBURGH ROAD LITTLE THURROCK

Country United Kingdom

Postcode RM17 6UG

Contact person DAVID O' LEARY

Phone/Fax/Telex specify and Ph: 1111



Total number of packages 1

Total weight 0.1 kg

Dimensions in cm (Length x width x height) 10 x 10 x 10

Contents description DOCUMENTS

4. Initiating requirements

Attach the original and find the Shippers VAT/IBT number

5. Insurance Requirements

6. Customs Declaration

7. Handling Fee

8. Revenue Protection

9. Signature Required

EXTREMELY URGENT

DO NOT SEND CASH, CASH EQUIVALENT OR JE  
DHL's liability shall not exceed US\$100 for any shipment. See condi



INSTRUI  
RICICLARE

RICICLABILE

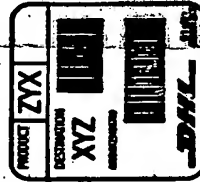
RICICLABILE

RICICLABILE

SHIPMENT AWB No.

DESTINATION:

OR



## SERVICE ALERT

INDICATE AS APPROPRIATE

TIME DELIVERY  
REQUIRED

SATURDAY DEL /  
HOLIDAY DEL REQUIRED

HOLD FOR PICK-UP

OTHER

INSTRUCTIONS/COMMENTS:

RECEIVED - 6 SEP 2005

*Op 105*



ADDITIONAL LABEL HERE  
Label or Transport Collect label



NOT KNOWN

RECEIVED - 6 SEP 2006



Subsidiary of IVAX Corporation

Mr David O Leary  
25 Newburgh Road  
Little Thurrock  
Grays  
Essex RM17 6UG

Albert Basin, Royal Docks  
London E16 2QJ  
Telephone 08705 02 03 04  
Fax 08705 32 33 34

3<sup>rd</sup> August 2006

RESENT 5/1/07.

Dear David,

RE: US National Phase of PCT/2004/032160 for  
DRY POWDER INHALATION APPARATUS  
in the name of Norton Healthcare Limited

Please find enclosed a declaration for use in the prosecution of the above United States patent application by Norton Healthcare Limited. Please can you sign and date the declaration where indicated.

There is also an Assignment form that should be witnessed by someone who knows you at the time of your signing. Please can you sign the assignment in the presence of such a witness who should then also sign the assignment to show that your signature is indeed your true signature.

Please return the forms in the stamped, addressed envelope provided as quickly as possible.

Thanks for your help.

Best regards.

Yours sincerely

David W. Cottam Ph.D.  
Intellectual Property Counsel  
Norton Healthcare Limited